

"In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis."

Claimant has submitted his case to the Administrative Law Judge, but the evidence of the respondent is not yet complete. Until the respondent submits its evidence, the Administrative Law Judge renders a decision, and the appropriate appeal times have run, the ultimate disposition of the initial and original claim has not occurred. The Administrative Law Judge, in ruling that he is not authorized by K.S.A. 44-536 to award attorney's fees as the case is not yet "post award", is correct.

K.S.A. 44-534a restricts appeals from preliminary hearings to the following issues considered jurisdictional by the legislature and subject to review by the Appeals Board:

- (a) Whether the employee suffered an accidental injury;
- (b) Whether the injury arose out of and in the course of employee's employment;
- (c) Whether notice is given or claim timely made; or,
- (d) Whether certain defenses apply.

In the instant case, the Administrative Law Judge denied claimant's request for attorney's fees in ruling the case not a "post award" case. The Appeals Board finds that the Administrative Law Judge did not exceed his jurisdiction in denying attorney's fees to claimant's attorney. Said finding by the Administrative Law Judge is appropriate and does not fall within one of the jurisdictional issues set forth in K.S.A. 44-534a. Therefore, the Appeals Board is without jurisdiction to hear the appeal and it should be dismissed. See K.S.A. 44-551 as amended by S.B. 59.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated February 3, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven C. Alberg, Overland Park, KS
James E. Martin, Overland Park, KS
J. Paul Maurin III, Kansas City, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director